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Aj 39. (New) The method of Claim 36, wherein the protein is alpha lactalbumin-enriched whey protein.
40. (New) The method of Claim 36, wherein the fat is a non-atherogenic oil, partially hydrogenated oil or combinations thereof.
41. (New) The method of Claim 36, wherein the nutritional supplement is administered as part of a food or beverage.
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REMARKS

Claim Amendments

Claims 1-13 and 15-18, drawn to a non-elected invention, have been cancelled without prejudice to their reinstatement in this or a continuing application.

Claim 14 has been amended. Support for the Amendment to Claim 14 can be found throughout the Specification, for example at page 2, lines 1 to 4, and in the claim as originally filed. Claims 19-41 have been added. Claims 19 through 24 and Claims 27 through 29 are dependent on Claim 14. Support for new Claims 19-41 can be found throughout the Specification and in Claims 1-13 and Claim 16 as originally filed. No new matter has been added.

Affirmation of Election/Restriction

Applicants' affirm the telephonic election made to the Restriction Requirement on June 25, 2002. The claim of Group II (Claim 14), drawn to a method of providing an individual with nutritional supplementation that aids in the relief of stress, was elected for prosecution. Applicants reserve the right to file a continuing application or take such other appropriate action as deemed necessary to protect the non-elected inventions. Applicants do not hereby abandon or waive any rights in the non-elected inventions.

Rejection of Claim 14 Under 35 U.S.C. §112, Second Paragraph

Claim 14 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim that which Applicants regard as their invention. The Examiner states that “in Claim 14 “... the relief of stress” is vague and indefinite for the conditions under which stress is relieved and/or how stress relief is quantified/measured. See, e.g., all of “oral administration”, “an amount effective to relieve...”, “... as measured by...”.”

Claim 14 has been amended to recite a method of providing an individual with nutritional supplementation that aids in the relief of symptomology associated with stress resulting from serotonin-deficient disorders, comprising administering to an individual in need thereof a nutritional supplement comprising a low-glycemic-index carbohydrate, protein comprising alpha lactalbumin-enriched whey protein, fat, caffeine and 5-hydroxytryptophan (5-HTP), in amounts that work together to reduce stress and conditions associated therewith.

The instant Specification provides ample support to one of skill in the art regarding the onset of stress and the symptomology associated therewith. (See instant Detailed Description at page 3, line 13, to page 4, line 5). Furthermore, the Specification provides ample support for the ingredients that comprise the nutritional supplement and the role each ingredient plays in the management of conditions associated with stress. (See instant Detailed Description at page 15, lines 17 to 24).

Applicants are confused regarding the Examiner’s pointing out of the phrases “oral administration”, “an amount effective to relieve...”, “... as measured by...”. These phrases are neither found in Claim 14 as originally filed or amended, nor in cancelled Claims 1-13 and 15-18 as originally filed.

Claim 14, as amended, distinctly claims that which Applicants regard as their invention. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claim 14 Under 35 U.S.C. §102(b)

Claim 14 is rejected under 35 U.S.C. §102(b) as being anticipated by Markus *et al.* (*Am. J. Clin. Nutr.*, 2000: 71:1536-44)(“Markus”). The Examiner states that:

Markus describes on page 1541, column 2, lines 1-3 that “...alpha lactalbumin-enriched whey protein increased the plasma Trp-

LNAA ratio in subjects ...highly vulnerable to stress...” Markus also describes on page 1541, column 2, lines 5-6 “...an improvement in mood, and a reduced cortisol stress response in subjects who were highly vulnerable to stress.”

Thus, according to the Examiner, Markus teaches “that alpha lactalbumin-enriched whey protein increases the plasma Trp-LNAA ratio in subjects both highly vulnerable to stress.”

Markus teaches an isoenergetic diet composed of standard products and providing 7995 kJ was used with 10% of energy as protein, 60% of energy of carbohydrate, and 30% of energy as fat. (See Markus, p. 1537, col. 2, line 57 to p. 1538, col. 1, line 1). Markus fails to teach all the ingredients included in the nutritional supplement of Claim 14, *i.e.*, low-glycemic-index carbohydrates, protein which includes alpha lactalbumin-enriched protein, fat, caffeine and 5-hydroxytryptophan (5-HTP), in amounts that together work to reduce stress and conditions associated therewith. Markus does not teach the use of 5-HTP or that 5-HTP increases satiety because it increases serotonin production, a hormone which stimulates satiety neurons in the hypothalamus. Increased satiety is beneficial because overeating is a common side effect in stressed individuals. Additionally, Markus fails to teach the use of low-glycemic-index carbohydrates. Although Markus does not explicitly state whether or not low-glycemic-index carbohydrates can be used, Markus teaches that the use of a carbohydrate rich, protein poor (CR-PP) diet causes an increase in the plasma Trp-LNAA ratio by a carbohydrate-induced rise in glucose, which triggers insulin secretion. (See Markus, p. 1536, col. 2, 1st paragraph). Therefore, Markus teaches the use of high-glycemic-index proteins because, as taught by Applicants, foods with low-glycemic-indexes evoke a small rise in blood glucose and insulin, whereas foods with high-glycemic-indexes evoke a quicker, more robust, increase in glucose and insulin secretion.

For anticipation under 35 U.S.C. §102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Markus does not teach or suggest every aspect of the invention of Claim 14, as amended, or of new Claims 19-31.

Markus does not anticipate the invention of Claim 14, as amended, or of new Claims 19-31. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claim 14 Under 35 U.S.C. §102(e)

Claim 14 is rejected under 35 U.S.C. §102(b) as being anticipated by Blum *et al.* (U.S. Patent No. 6,132,724) (“Blum”). The Examiner states that:

“Blum describes in column 4, line 61 “...serotonin...” “...reduces incidence of stress...” in column 4, line 66. Blum also describes in column 79, lines 32-25 “...neurochemical is biosynthesized by first hydroxylating L-tryptophan to obtain 5-hydroxytryptophan and then decarboxylating the latter to obtain serotonin.”

According to the Examiner, Blum teaches that 5-hydroxytryptophan is decarboxylated to obtain serotonin which reduces the incidence of stress.

Blum only teaches that 5-hydroxytryptophan is decarboxylated to obtain serotonin which reduces the incidence of stress. Blum neither teaches or suggests the nutritional supplement of Claim 14, *i.e.*, low-glycemic-index carbohydrates, protein which includes alpha lactalbumin-enriched protein, fat, caffeine and 5-hydroxytryptophan (5-HTP), in amounts that together work to reduce stress and conditions associated therewith, nor a method of providing an individual with nutritional supplementation that aids in the relief of symptomology associated with stress.

For anticipation under 35 U.S.C. §102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Because Blum does not teach every aspect of the claimed invention either explicitly or impliedly, Blum does not anticipate the invention of Claims 14, as amended, and new Claims 19-31. Reconsideration and withdrawal of the rejection are respectfully requested.

Information Disclosure Statement

A Supplemental Information Disclosure Statement (SIDS) is being filed concurrently herewith. Entry of the IDS is respectfully requested. Applicants have not yet received the International Search Report for the corresponding PCT application.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned at (978) 341-0036.

Respectfully submitted,

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MARKED UP VERSION OF AMENDMENTSClaim Amendments Under 37 C.F.R. § 1.121(c)(1)(ii)

14. (Amended) A method of providing an individual with nutritional supplementation that aids in the relief of symptomology associated with stress resulting from serotonin-deficient disorders, comprising administering to an individual in need thereof [the] a nutritional supplement [of Claim 1] comprising a low-glycemic-index carbohydrate, protein comprising alpha lactalbumin-enriched whey protein, fat, caffeine and 5-hydroxytryptophan (5-HTP), in amounts that together work to manage conditions associated with stress.